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Directive 019

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Compliance Assurance

The Energy Resources Conservation Board (ERCB/Board) has approved this directive on September 1, 2010.

Dan McFadyen
Chairman

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1 Scope

The Compliance Assurance program and processes of the Energy Resources Conservation Board (ERCB/Board) support the ERCB's mission to ensure that the discovery, development, and delivery of Alberta's resources take place in a manner that is fair, responsible, and in the public interest. Under the Compliance Assurance program, three activities are used to facilitate efficient and effective compliance: education, prevention, and enforcement.

The ultimate goal of the ERCB Compliance Assurance program is to ensure compliance with the requirements that are written, monitored, and enforced on behalf of all Albertans. Compliance ensures that resource activity within the province is conducted in a manner that protects public safety, minimizes environmental impact, ensures effective conservation of resources, and ensures stakeholder confidence in the regulatory process.

This directive specifically focuses on the prevention and enforcement aspects of compliance assurance and applies to all ERCB requirements and processes.

2 Compliance Assurance Principles and Objectives

Education, prevention, and enforcement activities are used to ensure compliance with ERCB requirements and continue to be part of the foundation of its Compliance Assurance strategy. Based on stakeholder feedback and ERCB experience, this edition of *Directive 019* updates the ERCB's Compliance Assurance process to improve process clarity, focus, and efficiency. It is built on the compliance assurance principles that

- requirements are clear, understandable, and enforceable,
- industry is responsible for understanding and complying with ERCB requirements and processes,
- the rules of natural justice and procedural fairness are fundamental to the conduct of ERCB duties and functions,
- enforcement actions are timely, effective, and consistent with ERCB requirements,
- compliance reporting is open and transparent,
- the ERCB is committed to stakeholder awareness and accountability through information and education, and
- the ERCB has competent and engaged staff to deliver compliance assurance activities.

The purpose of this directive is to clearly explain

- what licensees must do when a noncompliance is identified by the ERCB (Section 4),
- the compliance assurance processes and consequences for low and high risk noncompliant events (Section 4),
- the ERCB enforcement appeal process (Section 5),
- the ERCB Voluntary Self-Disclosure policy, including the rules and benefits of voluntary self-disclosure (Section 6), and
- the availability of compliance information (Section 7).

The ERCB will monitor industry performance and make changes to its Compliance Assurance processes as necessary to ensure high compliance rates overall.

3 Compliance Assurance Based on Inherent Risk

The ERCB uses a Risk Assessment Matrix (available on the ERCB Web site www.ercb.ca under Industry Zone : Compliance and Enforcement) to predetermine the level of risk inherent in noncompliance of each ERCB requirement. Each requirement has an associated low risk or high risk ranking based on

- health and safety,

- environmental impact,
- resources conservation, and
- stakeholder confidence in the regulatory process.

Requirements regarding equity, orderly and efficient development, and data collection are risk assessed using the stakeholder confidence column in the risk matrix. If the assessment result on all of the above areas is minimal, the noncompliance is considered low risk. If the effect on these areas is more significant, the noncompliant event is considered high risk.

The ERCB continues to classify all its requirements as low or high risk and document them under the appropriate compliance category. If necessary, the ERCB will periodically review the risk rating of requirements and make revisions to ensure fairness and consistency throughout the compliance categories. For an overview of current ERCB categories, contact personnel, and ERCB Risk Assessed Noncompliance, go to the ERCB Web site www.ercb.ca (under Industry Zone : Compliance and Enforcement).

The risk rating of a requirement is predetermined, and once the facts of a given noncompliant event are established, ERCB staff have no discretion in applying a different risk rating. Because of this, the risk rating of a given requirement cannot be appealed to the ERCB group or the ERCB Enforcement Advisor.

4 Compliance Assurance

Compliance Assurance is more than just the use of enforcement activities; it is the ERCB's program to ensure compliance with ERCB requirements. An education activity is conducted by the ERCB to promote and raise awareness of ERCB requirements, inform on how to comply with requirements, and explain the consequences of noncompliance. A prevention activity is conducted to address and prevent recurrence of a noncompliant event. An enforcement activity is the application of remedial, deterrence, and punitive measures to achieve compliance with all requirements administered by the ERCB.

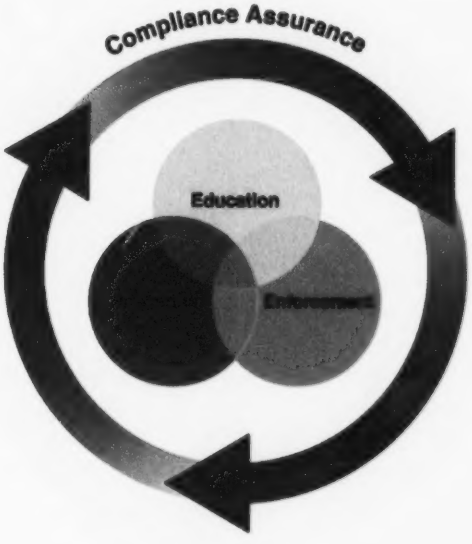

Figure 1. ERCB Compliance Assurance process

All three Compliance Assurance activities are interrelated and are the basis of the ERCB's Compliance Assurance program. Figure 1 indicates the interaction between each compliance assurance activity and is surrounded by the continuous improvement process arrows.

How does the ERCB deal with low and high risk noncompliant events?

The following sections set out the processes and consequences of low and high risk noncompliant events (see also Tables 1 and 2). The processes include the prevention notices and enforcement actions both for individual events and for persistent noncompliance.

Both the processes for low and high risk events have prevention notice tools and enforcement action tools. Both address noncompliant events and are designed to achieve compliance.

The low risk process is sequential. The process starts with issuance of a Notice of Low Risk Noncompliance. If the noncompliant event continues after the timeframe required by the ERCB to come into compliance, the ERCB will issue a Low Risk Enforcement Action.

By contrast, the high risk process is not necessarily sequential. The ERCB's response to a high risk noncompliant event is based on the circumstances of the case and the licensee's compliance history. Accordingly, the response in the high risk process may result in the issuance of any one of the following:

- Notice of High Risk Noncompliance,
- High Risk Enforcement Action,
- High Risk Enforcement Action (Persistent Noncompliance),
- High Risk Enforcement Action (Failure to Comply), or
- High Risk Enforcement Action (Demonstrated Disregard).

How will the licensee know that the ERCB has initiated a response to a noncompliant event in either the low or high risk process?

When the ERCB determines the existence of a noncompliance, it will notify the licensee in writing (by letter, inspection form, e-mail, fax, etc.), setting out its response, in accordance with *Directive 019*, and the timelines by which the licensee is expected to bring itself into compliance.

Table 1. Prevention and Enforcement Responses for Low Risk Noncompliance

Notice of Low Risk Noncompliance	Low Risk Enforcement Action[1,2]
What must the licensee do when the ERCB identifies a noncompliant event? After receiving a Notice of Low Risk Noncompliance, the licensee must • correct or address the low risk noncompliance within the time specified by the ERCB group that initiated the notice, • notify the ERCB group that the low risk noncompliance has been corrected or addressed in the specified time, and • pay any noncompliance fee set out in the notice. **When is compliance achieved?** Compliance is achieved immediately after the licensee completes all of the requirements of the Notice of Low Risk Noncompliance to the satisfaction of the ERCB group. **What happens if the licensee does not correct or address the low risk noncompliance in the time specified by the ERCB group?** The licensee will be issued a Low Risk Enforcement Action.	**What must the licensee do when the ERCB uses Low Risk Enforcement Action?** After receiving Low Risk Enforcement Action, the licensee must • immediately correct or address the low risk noncompliance, • notify the ERCB group that the low risk noncompliance has been corrected or addressed in the specified time, and • develop, implement, and submit written action plan[3] within 30 calendar days or in the time specified by the ERCB group. The licensee may also be required to meet with the ERCB group to discuss the low risk noncompliance, the licensee's compliance history, or the written action plan.[3] The ERCB group may also apply one or more of the following enforcement consequences, as its authority provides: • noncompliance fees, • partial or full suspension, • suspension and/or cancellation of permit, licence or approval, • issuance of an Order (Miscellaneous, Closure, or Abandonment), and/or • Refer status: focused or global. **When is compliance achieved?** Compliance is achieved immediately after the licensee completes all of the requirements of Low Risk Enforcement Action to the satisfaction of the ERCB group. **What happens if the licensee does not comply with the requirements of Low Risk Enforcement Action?** The licensee is required to meet with senior ERCB personnel and is subject to escalated enforcement consequences within Low Risk Enforcement Action.

[1] Senior ERCB personnel will contact the licensee before enforcement consequences are escalated.
[2] Enforcement action is published by the ERCB in *ST108: ERCB Monthly Enforcement Action Summary* (Section 7) if a Refer status has been applied against a licensee and/or with the issuance of a Board Order.
[3] See the Glossary (Appendix 1) for the requirements for a written action plan.

Table 2. Prevention and Enforcement Responses for High Risk Noncompliance

Notice of High Risk Noncompliance	High Risk Enforcement Action[2]	High Risk Enforcement Action (Persistent Noncompliance)[1,2]
What must the licensee do when the ERCB identifies a high risk noncompliant event? To address the specific noncompliant event, the licensee must • immediately correct or address the high risk noncompliance upon notification, • if necessary, suspend operations,[3] either partially or fully, when safe to do so, in order to remove any potential impact or hazard associated with the noncompliance; suspension of operations must not occur if it results in an increased impact or hazard to the environment or the public, • notify the ERCB group that the high risk noncompliance has been corrected or addressed. The ERCB group may also apply one or more of the following consequences in the Notice of High Risk Noncompliance: • develop, implement, and/or submit a written action plan[4] in the time specified by the ERCB group, and/or • meet with the ERCB group to discuss the high risk noncompliance and the licensee's compliance history. **When is compliance achieved?** Compliance is achieved immediately after the licensee completes all of the requirements of Notice of High Risk Noncompliance to the satisfaction of the ERCB group. **What happens if the licensee does not comply with the requirements of Notice of High Risk Noncompliance?** The licensee is subject to High Risk Enforcement Action (Failure to Comply).	**What must the licensee do when the ERCB identifies a high risk noncompliant event?** To address the specific noncompliant event, the licensee must • immediately correct or address the high risk noncompliance, • if necessary, suspend operations, either partially or fully, when safe to do so, in order to remove existing or potential impact/hazard associated with the noncompliance; the suspension of operations must not occur if it results in an increased impact or risk to the public or the environment, • develop and implement a written action plan[4] within 60 calendar days or in the time specified by the ERCB group, and • notify the ERCB group that the high risk noncompliance has been corrected or addressed. The licensee may be required to submit the written action plan. A meeting with the ERCB group to discuss the high risk noncompliance, the licensee's compliance history, and the written action plan may also be required. The ERCB group may also apply one or more of the following enforcement consequences, as its authority provides: • noncompliance fees, • self-audit or inspections, • increased audits or inspections, • partial or full suspension, and/or • suspension and/or cancellation of permit, licence, or approval. **What happens if the licensee has a subsequent high risk noncompliance during the period for development and implementation of its action plan?** Subsequent high risk noncompliant events that occur in the same compliance category during this time may result in either additional Notice of High Risk Noncompliance or High Risk Enforcement Actions. However, if a subsequent high risk noncompliance during this time results in the determination of persistent noncompliance, High Risk Enforcement Action (Persistent Noncompliance) may be initiated. **When is compliance achieved?** Compliance is achieved immediately after the licensee completes all of the requirements of High Risk Enforcement Action to the satisfaction of the ERCB group. **What happens if the licensee does not comply with the requirements of High Risk Enforcement Action?** The licensee is subject to High Risk Enforcement Action (Failure to Comply).	**What will happen if a specific high risk noncompliant event results in the licensee being identified as persistently noncompliant?** To address the specific noncompliant event, the licensee must • immediately correct or address the high risk noncompliance, • if necessary, suspend operations, either partially or fully, when safe to do so, in order to remove existing or potential impact/hazard associated with the noncompliance; the suspension of operations must not occur if it results in an increased impact or risk to the public or the environment, • develop, implement, and submit written action plan[4] within 30 calendar days or in the time specified by the ERCB group, • notify the ERCB group that the high risk noncompliance has been corrected or addressed in the specified time, and • meet with the ERCB group to discuss the high risk noncompliance, the licensee's compliance history, and the written action plan. The ERCB group may also apply one or more of the following enforcement consequences, as its authority provides: • noncompliance fees, • self-audit or inspections, • increased audits or inspections, • third-party audits or inspections, • partial or full suspension, and/or • suspension and/or cancellation of permit, licence, or approval. **What happens if the licensee has a subsequent high risk noncompliance during the period prior to the acceptance or approval of the written action plan?** Subsequent high risk noncompliant events that occur in the same compliance category during this time may result in additional High Risk Enforcement Action (Persistent Noncompliance). However, if conditions warrant, the ERCB may escalate a licensee to either High Risk Enforcement Action (Failure to Comply) or issue a High Risk Enforcement Action (Demonstrated Disregard). **When is compliance achieved?** Compliance is achieved when • the licensee immediately completes all of the requirements of High Risk Enforcement Action (Persistent Noncompliance) to the satisfaction of the ERCB group, and • no additional high risk noncompliance occurs within the compliance category for 60 calendar days or in the time specified by the ERCB group from the date the ERCB group accepts the written action plan.[4] **What happens if the licensee does not comply with the requirements of High Risk Enforcement Action?** The licensee is subject to High Risk Enforcement Action (Failure to Comply).

[1] Senior ERCB personnel will contact the licensee before enforcement actions are escalated.
[2] Enforcement action is published by the ERCB in *ST108: ERCB Monthly Enforcement Action Summary* (Section 7).
[3] The act to suspend operations is decided upon and made by the licensee; not an act decided upon and made by the ERCB representative using a delegation of authority.
[4] See the Glossary (Appendix 1) for the requirements of a written action plan.

Table 2 continued. Prevention and Enforcement Responses for High Risk Noncompliance

High Risk Enforcement Action (Failure to Comply)[1,2]	High Risk Enforcement Action (Demonstrated Disregard)[2]
What happens if the licensee does not comply with the requirements of any of the following: • Notice of High Risk Noncompliance • High Risk Enforcement Action • High Risk Enforcement Action (Persistent Noncompliance) • High Risk Enforcement Action (Failure to Comply) • High Risk Enforcement Action (Demonstrated Disregard) The licensee must • immediately correct or address the high risk noncompliance, • notify the ERCB group that the high risk noncompliance has been corrected or addressed in the specified time, • if necessary, suspend operations, either partially or fully, when safe to do so, in order to remove existing or potential impact/hazard associated with the noncompliance; the suspension of operations must not occur if it results in an increased impact or risk to the environment or the public, • develop, implement, and submit a written action plan[4] acceptable to the ERCB group, and • meet with the ERCB group to discuss the high risk noncompliance, the licensee's compliance history, and the written action plan. The ERCB group may also apply one or more of the following enforcement consequences, as its authority provides: • noncompliance fees, • self-audit or inspections, • third-party audits or inspections, • partial or full suspension, • suspension and/or cancellation of permit, licence, or approval, • issuance of an Order (Miscellaneous, Closure, or Abandonment), and/or • Refer status: focused or global. **When is compliance achieved?** Compliance is achieved when • the licensee immediately completes all of the requirements of High Risk Enforcement Action (Failure to Comply) to the satisfaction of the ERCB group, and • no additional high risk noncompliance occurs within the compliance category for 180 calendar days or the time specified by the ERCB group from the date the ERCB group accepts the written action plan. **What happens if the licensee does not comply with the requirements of High Risk Enforcement Action (Failure to Comply)?** The licensee is required to meet with senior ERCB personnel and is subject to escalated enforcement consequences.	**What happens if the ERCB determines that enforcement starts with High Risk Enforcement Action (Demonstrated Disregard)?** The licensee must • immediately correct or address the high risk noncompliance, • notify the ERCB group that the high risk noncompliance has been corrected or addressed in the specified time, • if necessary, suspend operations, either partially or fully, when safe to do so, in order to remove existing or potential impact/hazard associated with the noncompliance; the suspension of operations must not occur if it results in an increased impact or risk to the public or the environment, • develop, implement, and submit a written action plan[4] acceptable to the ERCB group, and • meet with the ERCB group to discuss the high risk noncompliance, the licensee's compliance history, and the written action plan. The ERCB group may also apply one or more of the following enforcement consequences, as its authority provides: • noncompliance fees, • self-audit or inspections, • third-party audits or inspections, • partial or full suspension, • suspension and/or cancellation of permit, licence, or approval, • issuance of an Order (Miscellaneous, Closure, or Abandonment), and/or • Refer status: focused or global. **When is compliance achieved?** Compliance is achieved when • the licensee immediately completes all of the requirements of High Risk Enforcement Action (Demonstrated Disregard) to the satisfaction of the ERCB group, and • no additional high risk noncompliance occurs within the compliance category for 180 calendar days or the time specified by the ERCB from the date the ERCB group accepts the written action plan. **What happens if the licensee does not comply with the requirements of High Risk Enforcement Action (Demonstrated Disregard)?** The licensee is required to meet with senior ERCB personnel and is subject to escalated enforcement consequences within High Risk Enforcement Action (Failure to Comply).

[1] Senior ERCB personnel will contact the licensee before enforcement actions are escalated.
[2] Enforcement action is published by the ERCB in *ST108: ERCB Monthly Enforcement Action Summary* (Section 7).
[4] See the Glossary (Appendix 1) for the requirements of a written action plan.

4.1 Prevention Notices

When may the ERCB issue a Notice of High Risk Noncompliance?

On identifying a high risk noncompliant event, the ERCB will typically issue a High Risk Enforcement Action.[1] However, in certain cases, the ERCB may issue a Notice of High Risk Noncompliance instead of a High Risk Enforcement Action. Before issuing a Notice of High Risk Noncompliance, the ERCB examines all available information to determine the full extent of the noncompliant event.

The determination of whether issuance of a Notice of High Risk Noncompliance is appropriate in the circumstances is at the sole discretion of the ERCB. However, if the ERCB decides to issue a High Risk Enforcement Action instead of Notice of High Risk Noncompliance, the ERCB will provide reasons and justification for that decision, which will be documented.

The ERCB may find it not necessary to issue a High Risk Enforcement Action, but instead may issue a Notice of High Risk Noncompliance if

1) in the opinion of the ERCB, there is no evidence that the identified high risk noncompliant event has resulted in an impact on public health and safety, the environment, resource conservation, or stakeholder confidence in the regulatory process; and

2) the licensee can immediately correct the high risk noncompliant event and bring itself into full compliance with the ERCB requirement.

Typically the licensee must meet 1 and 2 above before the ERCB will issue a Notice of High Risk Noncompliance. However, if the licensee meets 1 and in the opinion of the ERCB the licensee cannot meet 2, the ERCB may issue a Notice of High Risk Noncompliance if the licensee immediately removes all risks that the noncompliance may pose to public health and safety, the environment, resource conservation, or stakeholder confidence in the regulatory process.

Issuance of the Notice of High Risk Noncompliance in the above circumstances provides an opportunity for the licensee to bring itself into compliance without receiving a High Risk Enforcement Action. If the licensee fails to comply with the Notice of High Risk Noncompliance, the ERCB will issue a High Risk Enforcement Action (Failure to Comply). The ERCB will only use the Notice of High Risk Noncompliance in the circumstances outlined above.

It should be noted that even when the above circumstances exist, the ERCB may proceed directly to issue a High Risk Enforcement Action for the identified noncompliance if the licensee has a history of noncompliance with ERCB requirements, pursuant to the ERCB's persistent noncompliance framework and the specific compliance category's persistent noncompliance criteria.

All Notices of High Risk Noncompliance will be used in the determination of persistent noncompliance.

[1] "High Risk Enforcement Action" includes all possible High Risk Enforcement Action option responses available to the ERCB representative, as described in Table 2.

4.2 Enforcement Action

Will the ERCB escalate enforcement actions?

Yes, the ERCB will escalate enforcement actions as necessary using the framework described in Tables 1 and 2. If initial enforcement action does not result in compliance or the licensee has been identified as persistently noncompliant, senior ERCB personnel will contact the licensee before enforcement actions are escalated.

Senior ERCB staff involvement is not necessary for the initial enforcement action, but is used when a licensee fails to comply with the initial enforcement action. This rarely occurs, but when it does, the ERCB considers this a grave situation, in that the licensee either cannot or will not comply. Instead of automatically sending out a letter and escalating enforcement, which may not change the licensee's ability or willingness to comply, the ERCB will look at the situation with the benefit of the experience of a senior ERCB employee and contact the licensee to convey the gravity of the situation, either with a phone call or a face-to-face meeting. Through this route, the best way can be found to have the noncompliance rectified.

How will the licensee know that the enforcement action is over?

For any High Risk Enforcement Action, the licensee will be advised by written communication that it has achieved compliance.

How does the ERCB deal with corporate amalgamations and transfers?

Until transfers are complete and approved by the ERCB, the licensee of record is responsible for licensed wells, facilities, and pipelines. Licensees are required to have the appropriate rights to hold a valid licence upon transfer. Once the transfer is approved by the ERCB, the new licensee is responsible. Any noncompliant event that is identified by the ERCB or the new licensee and is suitably addressed by the new licensee within the first 90 days after the corporate amalgamation date or transfer date approved by the ERCB will not be subject to escalation of enforcement consequences.

4.2.1 Low Risk

What will happen if the licensee is identified as persistently noncompliant?

If a licensee is identified as persistently noncompliant, it must

- develop and implement a written action plan that explains
  - why the noncompliant events occurred or the previous action plan failed, and
  - how it will improve its compliance;
- review the action plan in a meeting with the ERCB group that initiated the notice of noncompliance; and
- have the written action plan accepted by the ERCB group.

Licensees that fail to improve their low risk noncompliance ratings after a subsequent ERCB assessment will be subject to one or more of the following enforcement consequences upon the next noncompliance event:

- noncompliance fees
- self-audit or inspections

- third-party audits or inspections
- partial or full suspension
- suspension and/or cancellation of permit, licence, or approval
- Refer status: focused or global

The ERCB has developed a Persistent Noncompliance Framework (available on the ERCB Web site www.ercb.ca under Industry Zone : Compliance and Enforcement) for guidance respecting early intervention and persistent noncompliance.

Will the licensee be subject to the high risk process if deemed to be persistently noncompliant for low risk noncompliance events?

No, but the ERCB will take the necessary actions to ensure that compliance is achieved in the low risk process.

4.2.2 High Risk

What will happen if the licensee is identified as persistently noncompliant?

The ERCB has developed a Persistent Noncompliance Framework (available on the ERCB Web site www.ercb.ca under Industry Zone : Compliance and Enforcement) for guidance respecting early intervention and persistent noncompliance.

All ERCB Notices of High Risk Noncompliance and High Risk Enforcement Actions will be used in the determination of persistent noncompliance.

Will the ERCB advise the licensee of impending identification as being persistently noncompliant?

Yes, the ERCB will notify a licensee of a possible designation of persistent noncompliance. This notification may occur in either a Notice of High Risk Noncompliance or a High Risk Enforcement Action.

How will the ERCB ensure that High Risk Enforcement Actions are fair and consistent?

Ensuring a level playing field is important to the ERCB. Fairness and consistency are provided for by the use of the Risk Assessment Matrix. This assessment tool helps to ensure the appropriate compliance process for our requirements and focused training of ERCB staff. In addition, the ERCB maintains open channels of communication with all stakeholders, as well as an appeal process.

ERCB Compliance Assurance policy and processes are subject to internal audit, reporting, and accountability processes. ERCB internal governance systems establish clear roles and responsibilities to ensure that policies are applied fairly and consistently.

What happens if the licensee does not comply with an Order of the Board?

The ERCB will take the necessary steps within its jurisdiction to ensure public health and safety and the protection of the environment. For example, as set forth in the *Oil and Gas Conservation Act* (*OGCA*), steps may include the ERCB taking over operations, suspending operations, and/or conducting cleanup or abandonment operations. Following this, the ERCB will undertake debt enforcement proceedings to recover any costs it has expended in so doing. In addition, in accordance with Section 106 of the *OGCA*, the ERCB may initiate

proceedings to make a declaration naming accountable individuals. Once named, such individuals may be prevented from conducting business with the ERCB on behalf of any licensee in the capacity of an officer or decision-maker.

When may the ERCB initiate prosecution for noncompliance?

The ERCB may refer a matter to prosecution when it believes a licensee has acted with demonstrated disregard. The ERCB will gather detailed information regarding the noncompliance event and make a determination whether to refer a matter to prosecution on a case-by-case basis.

4.3 Education Activities

The ERCB uses a range of educational programs, including developing and distributing regulatory guidance materials, developing and conducting workshops and training courses, developing Web-based tools, and responding to regulatory questions from the regulated community and industry associations. In conjunction with other ERCB groups, education activities include classroom-style education packages and programs. The ERCB also supports the implementation of education programs by others. The education component of Compliance Assurance promotes compliance by raising awareness of regulatory requirements and administrative policies and processes.

5 Prevention Notice and Enforcement Action Appeals

Licensees are encouraged to fully discuss prevention notices or enforcement actions with the ERCB group prior to filing an appeal with the ERCB Enforcement Advisor. Prevention notices or enforcement actions may be overturned at the group level. However, if prevention notices or enforcement actions are sustained at the group level, a licensee may submit an appeal to the ERCB Enforcement Advisor regarding prevention notices or enforcement actions that have not resulted in prosecution or issuance of a Board Order. The appeal must

- be submitted within 60 calendar days of the date of the prevention notice or enforcement action,
- be in writing, and
- explain why the licensee disagrees with the prevention notice or enforcement action decision.

The ERCB will consider the information for errors of fact, regulatory requirements, and process. The Enforcement Advisor will not consider an appeal if the grounds relate to the predetermined risk ranking of a noncompliance or the ERCB's decision to issue a High Risk Enforcement Action rather than a Notice of High Risk Noncompliance or if the appeal raises a question of policy to be determined by the Board. The timeline for a decision on appeals by the Enforcement Advisor is 10 working days after receipt of all required documentation.

Parties seeking to apply for a review or appeal of a decision of the Enforcement Advisor should refer to Sections 39, 40, and 41 of the *Energy Resources Conservation Act* (*ERCA*) and Section 48 of the *Energy Resources Conservation Board Rules of Practice*.

For further guidance on the *Directive 019* prevention notice or enforcement action appeal process, see Appendix 2.

6 Voluntary Self-Disclosure

What is voluntary self-disclosure?

Voluntary self-disclosure is the ERCB's acceptance of a licensee's self-disclosure of an identified noncompliant event that qualifies under the ERCB Voluntary Self-Disclosure policy set out in this directive.

The ERCB encourages all licensees to actively monitor their compliance with ERCB requirements through tools such as self-inspections and self-audits. When a licensee identifies a noncompliance, the ERCB expects it to be corrected or addressed and reported to the ERCB. In addition, the ERCB expects the licensee to take the same action as if the ERCB identified the noncompliance, for example, to shut down operations immediately if there is a risk to public health and safety or environmental protection. The ERCB's voluntary self-disclosure policy is intended to encourage licensees to proactively identify, report, and correct noncompliant events.

For further guidance on the ERCB's Voluntary Self-Disclosure framework and policy, see Appendix 3.

What are the benefits of voluntary self-disclosure?

- proactive correction of the noncompliance
- no enforcement if licensees correct or address the noncompliant events during the time agreed upon with the ERCB
- improved relationships between licensees and the ERCB
- improved public health and safety, protection of the environment, conservation of the resource, and regulatory confidence

What are the rules for voluntary self-disclosure of a noncompliance?

To self-disclose a noncompliance, a licensee must

- be the first party to contact the ERCB regarding the noncompliance, and
- take appropriate steps to correct or address it.

When self-disclosing a high risk noncompliance, a licensee must

- immediately correct or address the noncompliance, including suspending operations if warranted, to ensure that risk to the public or environment is mitigated, and
- develop and implement a written action plan within 60 days of the high risk noncompliant event or in the time specified by the appropriate ERCB group.

When self-disclosing a high risk noncompliance, a licensee may also be required to

- submit a written action plan in the time specified by the ERCB group, and/or
- meet with the ERCB group to discuss the high risk noncompliance or the licensee's compliance history.

The ERCB does not consider the following events to be self-disclosure:

- notification to the ERCB of a noncompliance during a required performance presentation

- notification to the ERCB of a noncompliance in an application to restore compliance
- notification after the ERCB has started an audit, inspection, or investigation
- notification to the ERCB required by an act, regulation, directive, or condition of an approval being given late
- notification to the ERCB of a noncompliance that should have been fixed
- licensee not being the first party to contact the ERCB
- licensee not taking the appropriate steps to address a noncompliance
- self-disclosure resulting in a competitive advantage

Will the ERCB accept self-disclosures of a noncompliance when a licensee is required to report the activity or incident?

No, self-disclosure by a licensee of a noncompliance that in the opinion of the ERCB[2] is related to or associated with an activity, event, or incident that the licensee is required to report to or notify the ERCB of under an act, regulation, directive, approval, etc., is not accepted as a voluntary self-disclosure under *Directive 019*.

Unless otherwise explicitly provided for, the ERCB initiates an investigation of the incident upon receipt of notification of an activity, event, or incident that must be reported under an ERCB requirement. Depending on the circumstances, the investigation may or may not result in enforcement action against the licensee.

How will the ERCB handle repeated self-disclosures of either the same or similar noncompliant events?

The ERCB sees benefits in accepting repeated self-disclosures since the noncompliant events are being identified, reported, and corrected or addressed by the licensee with the expectation that the noncompliant event will not occur in the future. However, if a licensee self-discloses a noncompliant event that has been previously self-disclosed, the ERCB group may request the licensee to submit a written action plan to prevent any future recurrence of the noncompliant event.

7 Compliance Performance Information

Will any Board Orders resulting from a noncompliance be made public?

Yes. ERCB Board Orders (Closure, Abandonment, and Miscellaneous) issued pursuant to an enforcement action are currently included in the ERCB Index of Board Orders (IBO), which is posted on the ERCB Web site www.ercb.ca under Industry Zone : Compliance and Enforcement : Compliance Information.

Will any enforcement actions resulting from a noncompliance be made public?

Yes, within 120 calendar days of their issuance, the ERCB summarizes and publishes all enforcement actions taken by it during the previous period except for a low risk enforcement action where no Refer status has been applied to a licensee and/or no Board Order has been issued in connection with the matter. The summary, entitled *ST108: ERCB Monthly Enforcement Action Summary*, which includes company names, is posted on the ERCB Web

[2] This opinion must be supported by documented justification and reasons.

site on the last Thursday of each month under Publications : Publication Catalogue—Publication Available : Serial Publications : ST108.

How can the licensee access its compliance records?

For ERCB Field Surveillance–related issues, licensees can currently access their event-specific and summary compliance category information via the ERCB Digital Data Submission (DDS) system on the Web. The ERCB is committed to improving the availability of comprehensive integrated compliance information as system developments allow. This information may be used by the licensee to verify the records. It is the responsibility of the licensees to monitor their progress and allow for continuous improvements to their compliance management systems.

Can stakeholders access a licensee's compliance information?

Yes, stakeholders may contact licensees respecting specific compliance information. If a licensee does not release the information, stakeholders may use the *Freedom of Information and Protection of Privacy Act* process to request the information.

Also, the ERCB publishes a comprehensive annual compliance report for all ERCB compliance categories. Incident reports, which may contain specific noncompliance and related enforcement action information, are also published.

As systems develop, the ERCB will make licensees' compliance summaries available on the ERCB Web site.

Appendix 1 Glossary

Applications – refers to those applications required under the acts and/or regulations administered by the ERCB.

Action plan – A licensee's plan that corrects or addresses a specific low or high risk noncompliance, including identification of the root causes of the event and steps to be taken to prevent future occurrences. For persistent noncompliance, it must address the licensee's failure to improve overall compliance category performance with the implementation of previous event-specific remedial plans. A licensee's plan must be retained. Action plans must be acceptable to the ERCB. If there has been suspension of operations or suspension and/or cancellation of a permit, licence, or approval by the ERCB, the written action plan must be acceptable to the ERCB and the licensee must receive authorization from the ERCB for the resumption of operations that were suspended or restatement of a permit, licence, or approval that was either suspended or cancelled.

Address (a noncompliant event) – The steps taken by a licensee, within the time specified by the ERCB, to remove all risks associated with a noncompliant event if the noncompliant event cannot be immediately corrected.

Correct (a noncompliance event) – A licensee immediately remedies a noncompliance so as to be compliant with the requirements in an act, regulation, directive, or condition of a licence, approval, permit, etc., as administered by the ERCB.

Compliance category (previously known as audit/inspection category) – Describes an activity or operation (e.g., drilling operations, gas facilities, pipelines). Each compliance category contains a group of noncompliant events related to a specific activity or operation. The ERCB uses compliance categories to identify persistent noncompliance related to that activity or operation. For the list of compliance categories, go to the ERCB Web site www.ERCB.ca under Industry Zone : Compliance and Enforcement : Compliance Categories and Contacts.

Demonstrated disregard – When a licensee knows or should know about a high risk noncompliant issue or event but does not act to remedy the issue or event. ERCB assessment of demonstrated disregard is made on a case-by-case basis.

Enforcement consequences – Describes the compliance tools used by the ERCB when applying enforcement. These include noncompliance fees, self-audits and inspections, third-party audits and inspections, partial and full suspension, suspensions and cancellations of permits, licences, and approvals, issuance of an Order (Miscellaneous, Closure, or Abandonment), and Refer status: focused or global.

Enforcement Advisor – The ERCB person assigned the authority under *Directive 019* to adjudicate between licensees and the ERCB groups that have undertaken enforcement actions under *Directive 019*.

ERCB group – A group within the ERCB responsible for the administration of specific or particular compliance categories. Such groups are responsible for compliance assurance processes, including enforcement within each compliance category.

Immediately – For the purposes of this directive, immediately means as the licensee becomes or is made aware of the noncompliant event or within the time period specified by the ERCB, whichever is later.

Licensee – For the purpose of this directive, the term licensee is used to designate the responsible duty holder (e.g., licensee, operator, company, applicant, approval holder, or permit holder) as specified in legislation.

Licensee compliance summary information – A report summarizing a licensee's compliance history.

Noncompliance fee – A fee imposed by the ERCB for a noncompliant event as prescribed by the acts and regulations administered by the ERCB.

Persistent noncompliance – Refers to an unacceptable rate, ratio, percentage, or number of noncompliant events by a licensee, either in the same or in different compliance categories.

Prosecution - for the purpose of this directive, means

a) being prosecuted for an offence under Section 107 or 108 of the *Oil and Gas Conservation Act*,

b) being prosecuted for an offence under Section 52 of the *Pipeline Act*, or

c) being prosecuted for any other offence under any other act or regulation administered by the ERCB.

Refer status – An enforcement status (focused or global) assigned to a licensee that is unable or unwilling to comply with the direction from the ERCB. Refer status results in a more rigorous review of the licensee's pending and future applications, having regard for the compliance performance of the licensee. The Refer status is removed when compliance is achieved.

- **Focused Refer** – An enforcement status that results in
  - the processing of applications respecting a specific activity or operation (e.g., pipelines, commingling, waste facilities) as nonroutine, taking in to consideration a licensee's compliance performance in one or more compliance categories or ERCB groups,
  - the licensee's applications specific to this activity or operation being brought before the Board for disposition, and
  - possible additional terms or conditions on business associate codes, licences, or approvals.
- **Global Refer** – An enforcement status that results in
  - all of the licensee's applications being processed as nonroutine,
  - all of the licensee's applications and decisions being brought before the Board for disposition, and
  - possible additional terms or conditions on business associate codes, licences, or approvals.

Senior ERCB personnel – Section leader/delegate, ERCB group's management in charge of a specific compliance category, and/or higher ERCB personnel.

Appendix 2 Prevention Notice and Enforcement Action Appeal Process and Guidance

A2.1 Introduction

Section 5 provides the foundation for the prevention notices or enforcement actions undertaken by ERCB groups under *Directive 019* to be appealed to the ERCB's Enforcement Advisor, provided that the enforcement action has not resulted in prosecution or issuance of a Board Order.

This appendix provides guidance on the *Directive 019* prevention notice or enforcement action appeal process in order to assist in the efficient, effective, fair, and consistent administration of the process referred to in Section 5. It is consistent with the ERCB's Compliance Assurance principle to ensure that all of its activities comply with the principles of natural justice and procedural fairness.

The appendix reflects the current procedures and policies of the ERCB as they relate to the *Directive 019* prevention notice or enforcement action appeal process, which may be updated from time to time.

The Enforcement Advisor's primary function is to adjudicate on the prevention notice or enforcement action giving consideration to errors of fact, regulatory requirements, and process.

A2.2 Enforcement Advisor's Authority

The Enforcement Advisor's position is not specifically referred to in any statute or regulation; however, the Enforcement Advisor's jurisdiction, functions, and powers are derived from Section 16 of the *Energy Resources Conservation Act (ERCA),* which provides:

> the Board, in the performance of the duties and functions imposed on it by the Energy Resources Conservation Act and by any other Act, may do all things that are necessary for or incidental to the performance of any of those duties or functions.

The Board's approval of *Directive 019* and in particular Section 5 recognizes the position of the Enforcement Advisor and delegates their powers to adjudicate on the validity of prevention notices or enforcement actions undertaken by the ERCB in accordance with *Directive 019*.

A2.3 Powers and Procedures

1) The Enforcement Advisor has the power to control its own process and make rules of general application to govern the *Directive 019* prevention notice or enforcement action appeal proceedings. The making of these rules are subject to the rules of natural justice, procedural fairness, and the requirements set out in this directive. The rules and procedures of general application are set out in this appendix.

2) Notwithstanding the rules and procedures of general application set out in this appendix, the Enforcement Advisor may also adopt rules and procedures of general application in addition to or in substitution for those contained within this appendix, subject to the requirements of the rules of natural justice and procedural fairness and *Directive 019*.

3) The Enforcement Advisor shall conduct appeals in a manner that ensures that the concepts of natural justice are complied with. This will be achieved by developing

processes and rules to ensure fairness and the prevention of an apprehension of bias through ensuring there has been no

a) involvement with the prevention notice or enforcement action prior to the appeal,

b) personal relationship with either party to an appeal,

c) verbal contact with either party during the appeal other than with regard to procedural matters.

4) The Enforcement Advisor will excuse him/herself from an appeal if any of the conditions in paragraph A2.4(3) exist.

5) If the Enforcement Advisor does excuse him/herself from an appeal, any technical specialist, manager, or executive manager with the ERCB may be appointed by the executive manager of the ERCB's Law Branch and may hear and make a determination on the appeal.

A2.4 Filing an Appeal

1) Prevention notices or enforcement actions undertaken by the ERCB groups under this directive may be appealed to the Enforcement Advisor provided that the prevention notice or enforcement action has not resulted in prosecution or issuance of a Board Order. If the enforcement action has resulted in prosecution or issuance of a Board Order, the enforcement action should be directly appealed to the Board, in accordance with Sections 39, 40, and 41 of the *ERCA*.

2) Section 5 of this directive provides that if prevention notices or enforcement actions after review are not rescinded at the ERCB group level, a licensee may file an appeal to the ERCB Enforcement Advisor. The appeal must

a) be submitted within 60 calendar days of the date of the prevention notice or enforcement action,

b) be in writing, and

c) explain why the licensee disagrees with the enforcement decision.

3) The Enforcement Advisor may hear an appeal after 60 calendar days of the date of the prevention notice or enforcement action if the delay in the filing is attributed to ERCB processes.

4) If a licensee chooses to appeal a prevention notice or enforcement action, the licensee will submit the following information in writing as part of the filing of the appeal:

a) the licensee's name, address in Alberta, telephone number, fax number, and e-mail address;

b) if the licensee is represented by an individual, the name of the individual, address in Alberta, telephone number, fax number, and e-mail address;

c) the name of the ERCB group that has taken the enforcement action and a copy of the enforcement action issued by that ERCB group;

d) a description of the approval, permit, or licence that is subject to the appeal;

e) a reference to the authority under which the appeal is made (i.e., Section 5 of *Directive 019*);

f) a clear and concise statement of the facts relevant to the appeal (preferably, each statement of fact should be numbered and be a new paragraph so that the ERCB group can accept or reject each statement of fact);

g) an explanation of how the prevention notice or enforcement action will directly and adversely affect the licensee;

h) the grounds upon which the appeal is made and submissions supporting the grounds of appeal (i.e., reasons);

i) an explanation of the review process, if any, that the licensee has held with the ERCB group;

j) any other information that may be useful in explaining or supporting the licensee's position on appeal; and

k) the remedy sought by the licensee.

5) An appeal and any subsequent submissions must be sent by e-mail to compliancecoordination@ercb.ca or by mail to the attention of the Enforcement Advisor at the ERCB Head Office. See the ERCB Web site www.ercb.ca under About the ERCB : Contact Information : ERCB Offices for the mailing address.

6) If the Enforcement Advisor determines that the licensee's submission is incomplete, the Enforcement Advisor will notify the licensee in writing and request the information necessary to make the application complete.

7) A licensee will provide the necessary information to make its submission complete within the time specified by the Enforcement Advisor.

8) A licensee may request an extension in order to provide the necessary information to make the submission complete.

9) A request for an extension must be made in writing and state the reasons for the extension.

10) If the Enforcement Advisor grants an extension, the licensee must provide the necessary information to make the submission complete within the time specified by the Enforcement Advisor.

11) The Enforcement Advisor may deny a request for an extension if the extension will result in an abuse of process or unduly delay the process.

12) If the Enforcement Advisor denies an extension, the Enforcement Advisor may proceed in the absence of the information or dismiss the appeal and advise the parties to the appeal in writing of the action taken.

A2.5 Service of an Appeal

1) On filing its appeal with the Enforcement Advisor, the licensee must provide a copy of its appeal submission to the ERCB group that issued the prevention notice or enforcement action.

2) If the licensee fails to provide a copy of its submission to the ERCB group, the Enforcement Advisor will direct the licensee to do so and will not proceed with the appeal until the licensee has provided a copy of the submission to the ERCB group.

3) On filing its response to an appeal, the ERCB group must provide a copy of its response to the licensee.

4) If the ERCB group fails to provide a copy of its response to the licensee, the Enforcement Advisor will direct the ERCB group to do so and will not proceed with the appeal until the ERCB group has provided a copy of its response to the licensee.

A2.6 Type of Hearing Proceeding

1) The appeal hearing is by way of written submission unless otherwise directed by the Enforcement Advisor.

A2.7 Withdrawal of an Appeal

1) If a licensee wishes to withdraw its appeal, it must file a written notice of withdrawal with the Enforcement Advisor and provide notice to the ERCB group.

2) The Enforcement Advisor may refuse a notice to withdraw an appeal if the withdrawal is not in the public interest and would undermine *Directive 019* or harm the ERCB's reputation.

A2.8 Summary Dismissal

1) Without obtaining a response from the ERCB group that issued the prevention notice or enforcement action that forms the subject of the appeal, the Enforcement Advisor may, on his/her own motion or on the motion of a party, review and determine whether

   a) the licensee's appeal contains some fundamental defect,

   b) proceeding would be an abuse of process, and/or

   c) the licensee's submission fails to support a prima-facie basis for appeal

   and may dismiss any part of an enforcement appeal.

2) A fundamental defect includes, but is not limited, to the following:

   a) The appeal is submitted beyond the time limit referred to paragraph A2.4(2) or beyond an extended time limit.

   b) The licensee has not taken steps or met conditions that are required for advancement of the appeal. This may include a failure to submit the minimal information required under paragraph A2.4(4).

   c) The Enforcement Advisor does not have the power to grant the remedy or make the decision requested by the licensee.

   d) The supporting reasons for the appeal show no basis for triggering the appeal process or no basis for granting the remedy sought.

3) An abuse of process includes but is not limited to the following:

   a) The supporting reasons for the appeal are frivolous or vexatious.

   b) The appeal was initiated or continued primarily with the intent to cause distress or harm to others.

   c) The appeal was initiated or continued only for the purpose of delay.

d) The appeal is an unjustified attempt to have a matter redetermined that has already been resolved in earlier proceedings or is currently being considered through another review or appeal process.

A2.9 Consideration of Further Matters

1) The Enforcement Advisor may, on his/her own motion, review the prevention notice or enforcement action and determine whether

   a) a noncompliant event other than that which is under appeal exists,

   b) the prevention notice or enforcement action is inconsistent with the evidence, or

   c) to proceed with the appeal would undermine *Directive 019* or harm the ERCB's reputation

   and may return the prevention notice or enforcement action to the ERCB group for reconsideration.

A2.10 Right to a Response

1) Once the ERCB group has been served with a copy of the licensee's submission, the ERCB group has 10 working days to respond to the licensee's submission.

2) The ERCB group's response will include, at a minimum, the following:

   a) the licensee's name and the representative's name (if applicable);

   b) the ERCB group name and the contact details of the person in the ERCB group who is the primary contact for the appeal;

   c) a description of the approval, permit, or licence that is subject to the appeal;

   d) a copy of the original prevention notice or enforcement action;

   e) a statement about whether the facts in the licensee's submission are accepted or rejected in relation to each statement of fact alleged by the licensee; rejected facts are to be supported by reasons setting out the ERCB group's account of the facts;

   f) an explanation of any consultative process the licensee may have held with the ERCB group, including, but not limited to, any review undertaken of the prevention notice or enforcement action; if the licensee requested the ERCB group to review the prevention notice or enforcement action, a copy of the ERCB group's response to the licensee's request to have the prevention notice or enforcement action reviewed;

   g) the ERCB group's submissions in relation to the issues raised by the licensee on appeal and why the group does not believe that that the remedy sought by the licensee should be granted; and

   h) any further facts or past/present circumstances relevant to making a decision on appeal.

3) An ERCB group may request an extension for providing the minimum information to make its response complete.

4) A request for an extension must be made in writing, stating reasons for the extension.

5) If the Enforcement Advisor grants an extension, the ERCB group must provide the necessary information to make the response complete within the time specified by the Enforcement Advisor.

6) The Enforcement Advisor may deny a request for an extension if the extension will result in an abuse of process or unduly delay the process.

7) If the Enforcement Advisor denies an extension, the Enforcement Advisor may proceed in the absence of the information or dismiss the appeal and advise the parties to the enforcement appeal in writing of the action taken.

A2.11 Investigation Powers

1) The Enforcement Advisor may direct ERCB personnel not a direct party to the appeal to gather information relating to the matter under appeal.

2) The Enforcement Advisor may request clarification from the ERCB's technical specialists.

3) The Enforcement Advisor will make available the information gathered and provide an opportunity for the parties to the appeal to respond to the information in the time specified by the Enforcement Advisor.

A2.12 Request for Information

1) If an Enforcement Advisor receives an appeal, he/she may request further information from the licensee or ERCB group that is required for the fair determination of the appeal.

2) The Enforcement Advisor may direct the licensee or the ERCB group to file such further information, documents, or material as the Enforcement Advisor considers necessary to permit a full and satisfactory understanding of the issues under appeal.

3) If a party to an appeal has been requested to supply additional information by the Enforcement Advisor, the party must respond in the time specified by the Enforcement Advisor.

4) The Enforcement Advisor will make this additional information available to the parties and provide an opportunity for the parties to respond to the information as the Enforcement Advisor considers appropriate.

5) If the Enforcement Advisor does not receive a response from the parties in the time specified and a request for an extension has not been received, the Enforcement Advisor may take any of the following actions:

   a) proceed in the absence of the information;

   b) adjourn the appeal; or

   c) dismiss the appeal; and

   advise the parties to the appeal in writing of the action taken.

A2.13 Evidence

1) The Enforcement Advisor may receive and accept evidence that he/she considers relevant and appropriate.

2) The Enforcement Advisor is not bound by the formal rules of evidence.

A2.14 Written Record

1) The written record on appeal may consist of, but is not limited to, any of the following information:
   a) the licensee's submissions;
   b) the ERCB group's response;
   c) advice from technical specialists; and
   d) any further information requested of the parties by the Enforcement Advisor on appeal.

A2.15 Scope of Review

1) The Enforcement Advisor will not consider the following grounds for appeal:
   a) challenges to the policy underlying a *Directive 019* process (e.g., risk rating of noncompliant events),
   b) the ERCB's decision to issue a High Risk Enforcement Action rather than an Notice of High Risk Noncompliance where documented justification, reason, or evidence has been provided to support the decision,
   c) the fairness of ERCB requirements set out in acts or regulations,
   d) enforcement actions that have resulted in a Board Order,
   e) enforcement actions that have resulted in prosecution, or
   f) any other matter as determined by the Enforcement Advisor.

A2.16 Appeal Decision

1) If the Enforcement Advisor concludes that the submissions and written record are complete, the Enforcement Advisor has 10 working days to provide a written decision. The decision may be to deny, partially grant, or grant an appeal from the time that the Enforcement Advisor determines that the written record has been gathered and is complete.

2) If in the Enforcement Advisor's opinion, a question of law must be clarified or there is a question surrounding the scope of the Enforcement Advisor's review, the Enforcement Advisor may consult with the ERCB's Law Branch.

3) Once the Enforcement Advisor has made a decision, the Enforcement Advisor will provide a written decision to the licensee and the ERCB group. The decision will describe the material facts, relevant issues, the reasons for the decision, and any advice on the remedies sought or future directions.

A2.17 Correcting Errors

1) The Enforcement Advisor may, within a reasonable time, amend the final written decision for any of the following reasons:
   a) to correct a clerical or typographical error or error of calculation;
   b) to correct an accidental slip or omission; or
   c) to clarify an ambiguity.

A2.18 Right of Appeal from a Decision of the Enforcement Advisor

1) A review or appeal of a decision of the Enforcement Advisor may be brought under the *ERCA*. Parties seeking to apply for a review or appeal of a decision of the Enforcement Advisor should refer to Sections 39, 40, and 41 of the *ERCA* and Section 48 of the *Energy Resources Conservation Board Rules of Practice*.

A2.19 Concurrent Proceedings

1) If a licensee files concurrent appeals in relation to the same enforcement action, the licensee must advise the Enforcement Advisor that concurrent proceedings have been filed at the time of its appeal under Section 5 of this directive.

A2.20 Directions Held in Abeyance Pending Appeal

1) Any direction set out in a prevention notice or enforcement action takes effect at the time prescribed. Should the prevention notice or enforcement action be appealed, the direction will not be suspended during the appeal process. However, in exceptional cases and on request by the licensee and supported by documented reasons, the ERCB group may suspend the direction in whole or in part and for any period.

2) If the ERCB group decides not to suspend the direction pending determination of an appeal, in exceptional cases and on request by the licensee and supported by documented reasons, the Enforcement Advisor may suspend a direction in whole or in part and for any period.

3) A licensee requesting the suspension of a direction set out in a prevention notice or enforcement action pending an appeal must demonstrate that

   a) there is a serious issue or issues to be determined on appeal,

   b) irreparable harm will be suffered if the suspension is not granted, and

   c) the balance of convenience, taking into account the public interest, favours the granting of a suspension.

Appendix 3 Voluntary Self-Disclosure Process and Guidance

A3.1 Introduction

Section 6 provides the foundation for the ERCB Voluntary Self-Disclosure policy under *Directive 019*. This appendix provides guidance in order to assist in the efficient, effective, fair, and consistent administration of the process referred to in Section 6. It is consistent with the ERCB's commitment to ensure that all of its activities comply with the principles of natural justice and procedural fairness.

The appendix reflects the current procedures and policies of the ERCB as they relate to the *Directive 019* ERCB Voluntary Self-Disclosure policy, which may be updated from time to time.

A3.2 Two-Stage Test for Voluntary Self-Disclosures

Section 6 of this directive provides for a two-stage test to determine whether a licensee qualifies under the ERCB's Voluntary Self-Disclosure policy. First, a licensee must be the first person to contact the ERCB about the specific noncompliant event and take appropriate steps to correct/address the noncompliant event identified. Second, a licensee must not fall into one of the events setout in Section 6 (disqualifying exceptions). If a licensee satisfies both these tests, the self-disclosed noncompliance will qualify under the ERCB Voluntary Self-Disclosure policy under this directive and no enforcement action will follow.

The Voluntary Self-Disclosure process also involves an initial period of time where no enforcement action may take place in relation to the self-disclosed noncompliant event. This period of time is triggered from the time that the licensee contacts the ERCB (verbally or in writing, whatever comes first) until either

- the ERCB has provided written communication to the licensee that its self-disclosed noncompliant event does not qualify as a voluntary self-disclosure under *Directive 019*; or
- the ERCB's deadline date imposed on the licensee to fully correct the noncompliant event has elapsed.

This initial period of time may vary in length depending on whether the noncompliant event qualifies under this policy and the nature, circumstances, or time it takes to correct the noncompliant event.

A3.3 Self-Disclosure of a Noncompliant Event

A licensee may self-disclose a noncompliant event either by

1) providing written notice to the ERCB of the noncompliant event, or
2) identifying a noncompliant event in a written action plan where that noncompliant event is not currently subject to any enforcement action.

A licensee may also verbally self-disclose a noncompliant event, which will trigger the initial period of time that no enforcement action will be issued in relation to the noncompliance. However, a licensee's self-disclosure of a noncompliant event will not qualify under the ERCB Voluntary Self-Disclosure policy until a licensee has self-disclosed the noncompliant event in writing to the ERCB. This is to ensure the accurate recording and acceptance of all voluntary self-disclosures.

The written self-disclosure of a noncompliance should include the following information unless otherwise directed by the specific ERCB group:[3]

- Name of person self-disclosing the noncompliance event
- Name of company
- BA code of licensee
- Licence/approval type
- Licensed substance, if applicable
- Licence/approval number (including the pipeline no./installation no. if applicable)
- Details of the specific noncompliant event
- Date and time of discovery of the noncompliant event
- Location where the noncompliant event occurred
- Duration in which the licensee was noncompliant
- Detailed description of circumstances leading up to the noncompliant event
- Immediate steps or procedures taken to correct the noncompliant event
- Any other information required by the ERCB to further assess the noncompliance

For further guidance on a method for submitting a noncompliance for consideration as a voluntary self-disclosure, see the ERCB Web site www.ercb.ca under Industry Zone : Rules, Regulations, Requirements : ERCB Forms : Voluntary Self-Disclosure Form : Voluntary Self-Disclosure Form.

Note that some ERCB groups may require the submission of a self-disclosure of a noncompliant event using a different form. You should clarify with each ERCB group prior to or at the time you self-disclose the noncompliant event the preferred method of submission. Contact the compliance category representative; their contact information is available on the ERCB Web site www.ercb.ca under Industry Zone : Compliance and Enforcement : Compliance Categories and Contacts.

A3.4 Qualifying for Voluntary Self-Disclosure

In accordance with Section 6, for a noncompliance to qualify as a voluntary self-disclosure the licensee must

- be the first party to contact the ERCB regarding the noncompliance, and
- take appropriate steps to correct or address the noncompliance.

Guidance on the meaning of each of the above elements of the ERCB Voluntary Self-Disclosure policy is provided discussed below.

1) Be the first party to contact the ERCB regarding the noncompliance.

A licensee's self-disclosure of a noncompliance will not qualify under this policy if the licensee is not the first party to self-disclose the noncompliance to the ERCB.

[3] Note that depending on the specific nature of the noncompliant event, some of the information may not be applicable or relevant in assessing whether the noncompliant event qualifies under the ERCB Voluntary Self-Disclosure policy.

A person who contacts the ERCB prior to the licensee does not need to be specific as to the actual noncompliant event that has occurred. The person just needs to contact the ERCB prior to the licensee with details that subsequently lead the ERCB to identifying the noncompliant event sought to qualify under the policy.

The one exception to this rule is the licensee designate exception: A licensee designate is any third party authorized to self-disclose a noncompliance on behalf of the licensee. The written authorization from a licensee must meet the Voluntary Self-Disclosure policy in Sections 6 and A3.4 of this directive and must be presented to the ERCB when requested and in the time specified.

2) Take appropriate steps to correct/address the noncompliance event.

If the licensee takes appropriate steps to address the self-disclosed noncompliant event, it may qualify as a voluntary self-disclosure as long as the circumstances surrounding the self-disclosure of the noncompliant event do not fall into one of the Disqualifying Exceptions discussed below.

In order to determine whether the steps presented by the licensee are appropriate in relation to a noncompliance, the ERCB representative receiving the self-disclosure may consult with more senior ERCB personnel or technical specialists. These individuals have the experience and expertise to determine whether the steps taken and proposed to be taken by the licensee are consistent with best practice methods. Communication between the licensee and the ERCB group will be undertaken to determine the appropriate steps; however, the determination of whether a licensee's steps are appropriate will always be at the sole discretion of the ERCB group, as opposed to the licensee.

The appropriateness of the licensee's immediate steps and proposed future steps will be assessed by the ERCB at the time the licensee **first** self-discloses the noncompliant event.

The following questions may be relevant in each case in determining whether the steps taken or proposed to be taken by the licensee are appropriate:

1) Do the immediate steps taken by the licensee adequately deal with the risk that the noncompliance poses to public health and safety and is the environment protected?
2) Are the steps that the licensee has taken and proposes to be taken consistent with ERCB practices and procedures to correct or address the self-disclosed noncompliance?
3) Are the immediate steps taken by the licensee and any additional steps proposed by the licensee consistent with what the ERCB would have done if presented with the same or a similar situation?

A3.5 Disqualifying Exceptions

Section 6 sets out a number of events that the ERCB has determined will disqualify a noncompliance for voluntary self-disclosure and are referred to in this appendix as disqualifying exceptions. These are further explained here.

A licensee will not qualify for a voluntary self-disclosure of a noncompliance under any of the following circumstances:

1) Notification of the noncompliance occurred during a required performance presentation—A required performance presentation is limited to the following:

- Required progress meetings to the ERCB from a licensee are to discuss the interpretation and conclusions reached on the operational data and information acquired since the last presentation—The presentation focuses on examples to illustrate key issues and general interpretations and conclusions and includes, but is not limited to, presentations on facility and wellbore operations and reservoir performance.
- A licensee presentation of a report on the company's compliance history, future plans, past performance, review of operating criteria, and existing and future approval applications, which is required by the ERCB.
- Any required education session provided to industry by the ERCB to help them understand the requirements administered by the ERCB for the purpose of improving licensee performance—An education session is required where provided for by an act, regulation, directive, or condition of approval.

2) Notification of a noncompliance occurred in an application to restore compliance—An application to restore compliance occurs if a licensee makes a new and distinctively separate formal application that has the effect of remedying a specific noncompliance yet to be identified by the ERCB.

   a) This disqualifying exception does not apply if
      - the licensee is the first to identify the noncompliance event prior to the submitting of the application;
      - the licensee self-discloses the noncompliance and expressly asks that the noncompliance be considered under the ERCB's Voluntary Self-Disclosure policy; and
      - the licensee advises the ERCB that it will be submitting an application that will have the effect of addressing/correcting the noncompliance.

3) Notification of a noncompliance after the ERCB has started an audit, inspection, or investigation.

   a) For the purposes of this policy, the ERCB deems that an investigation has started if the ERCB
      - has received a complaint from a stakeholder;
      - conducts a file review before entering the legal boundaries of a licensee's site;
      - receives a notification of an incident that a licensee is required to report under any act, regulation, directive, or condition of an approval that has been given late to the ERCB;
      - becomes aware of an incident and the root cause of the incident is unknown; or
      - directs a licensee to undertake an investigation (self-inspection concept) in relation to event, activity, or noncompliance event.

   b) For the purposes of this policy, the ERCB deems an inspection to have started
      - as soon as ERCB enters the legal boundaries of a licensee's site;
      - if the ERCB has received a complaint from a stakeholder;
      - if the ERCB receives a notification of an incident that a licensee is required to report under any act, regulation, directive, or condition of an approval that has been given late to the ERCB;
      - if the ERCB conducts a file review before it enters the legal boundaries of a licensee's site;

- from the time that the ERCB has provided written communication to the licensee that it will be undertaking an inspection; or
- from the time that the ERCB has a reasonable belief that a noncompliance is occurring or has occurred.

c) For the purposes of this policy, the ERCB will have deemed that an audit has started
- from the time that the ERCB has provided written communication to the licensee that it will be undertaking an audit; or
- at the time the ERCB makes a formal written request for information from a licensee that states that an audit is being conducted.

4) Notification to the ERCB required by an act, regulation, directive, or condition of an approval being given late.

Any act, regulation, directive, or condition of an approval administered by the ERCB and that requires a licensee to notify the ERCB of a reportable event does not qualify under the ERCB Voluntary Self-Disclosure policy.

Self-disclosure by a licensee of a noncompliance that in the opinion of the ERCB is related to or associated with an activity, event, or incident that the licensee is required to report to or notify the ERCB of will not be accepted as a voluntary self-disclosure under this policy.

5) Notification to the ERCB of a noncompliance that the licensee should have fixed.

A notification of a noncompliance that a licensee should have fixed may arise if the ERCB has issued a direction to correct or address an identified noncompliant event and the licensee has failed to do so and then attempts to advise in relation to that same noncompliant event that it has a noncompliance to self-disclose. The ERCB's direction may be written or verbal. However, all verbal direction to correct or address an identified noncompliant event must be recorded within the self-disclosure disposition, audit, inspection, and/or investigation file.

6) Licensee not the first party to contact the ERCB.

For this disqualifying exception the applicable principles in Section A3.4 should be applied.

7) Licensee not taking the appropriate steps to address a noncompliance.

For this disqualifying exception, the applicable principles in Section A3.4 should be applied.

8) Self-disclosure will result or has resulted in a competitive advantage.

For the purposes of this policy, competitive advantage means actions undertaken by the licensee, which in the opinion of the senior ERCB personnel represent an abuse of the Voluntary Self-Disclosure process.

A3.6 High Risk Noncompliance

If a licensee wishes to self-disclose a high risk noncompliant event and have it qualify as a voluntary self-disclosure under this directive, then in addition to meeting the two-stage test to qualify for a voluntary self-disclosure, the licensee must also

- develop and implement a written action plan within 60 days of the high risk noncompliance occurring or in a time specified by the ERCB.

When self-disclosing a high risk noncompliance the licensees may also be required to

- submit a written action plan in the time specified by the ERCB group, and/or
- meet with the ERCB group to discuss the high risk noncompliant event or the licensee's compliance history.

The timeline for development and implementation of the written action plan must reflect the seriousness of the noncompliance and therefore can be less than 60 calendar days.

At any time after the ERCB's acceptance of the noncompliance as a voluntary self-disclosure under this directive, the ERCB may undertake an audit to determine whether an action plan was developed and implemented by the licensee. At the time of the audit, a licensee's submission of its written action plan will be conclusive evidence that the licensee has undertaken the process of developing and implementing a written action plan.

A3.7 Enforcement Action

If a licensee self-discloses a noncompliance and it does not qualify as a voluntary self-disclosure under this directive, then it is at the discretion of the ERCB group whether it is appropriate for enforcement action to follow the noncompliance.

In determining whether it is appropriate for enforcement action to follow the noncompliance event, the following factors may be relevant:

- whether the licensee has corrected the noncompliance event at the time a decision is made whether to undertake enforcement action or not;
- whether the licensee has demonstrated that it is taking appropriate steps to address the noncompliance; or
- for reasons determined by the ERCB group, it is more appropriate to provide the licensee with an ERCB notice of either low or high risk noncompliance, setting out what needs to be completed prior to the issuance of an enforcement action in accordance with this directive.